No. 715

In the Supreme Court of the United States

OCTOBER TERM, 1939

UNITED STATES OF AMERICA, PETITIONER

v.

ARLENE SUMMERLIN, AS ANCILLARY ADMINISTRATRIX OF THE ESTATE OF J. F. ANDREW, DECEASED

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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CITATIONS

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The Solicitor General, on behalf of the United States of America, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above case on November 10, 1939, affirming the order of the Circuit Court for Polk County, Florida, which in turn affirmed the order of the County Judge's Court for Polk County, Florida, disallowing a claim filed by the United States against the estate of J. F. Andrew, deceased.

OPINIONS BELOW

The orders of the County Judge's Court (R. 11) and the Circuit Court for Polk County, Florida (R. 15) were entered without opinions. The opinion of the Supreme Court of Florida (R. 21) is reported in 191 So. 842.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Florida was entered on November 10, 1939 (R. 23). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, on the ground that the decision below denied a title, right, privilege or immunity claimed by the petitioner under the Constitution, statutes, and authority of the United States. Cases relied on to sustain the jurisdiction of this Court are *Davis* v. *Corona Coal Co.*, 265 U. S. 219; *United States* v. *Knott*, 298 U. S. 544.

The court below held that a claim of the United States against a decedent's estate was unenforceable and void because it was not filed in the office of the County Judge within eight months of the first publication of the notice to creditors, as required by Section 5541 (92), Compiled General Laws of Florida (1927). The United States contends that this statute cannot validly be applied against the United States.

Petitioner raised the federal question before the County Judge's Court for Polk County (R. 3); by assignment of errors on appeal from the order of the County Judge's Court to the Circuit Court (R. 12); and by assignment of errors on appeal from the order of the Circuit Court for Polk County to the Supreme Court of Florida (R. 16). Each of these courts passed upon the federal question adversely to the contention of the petitioner (R. 11, 15, 21).

The grounds, upon which it is contended that the question involved is substantial, are set forth under the Reasons for Granting the Writ, *infra*, pp. 6–9.

QUESTION PRESENTED

Whether a state statute, providing that a claim against the estate of a deceased person shall be void if not filed in the office of the County Judge within eight months from the time of the first publication of the notice to creditors, may be applied to a claim of the United States against the estate.

STATUTE INVOLVED

Section 5541 (92) of the Permanent Supplement, Compiled General Laws of Florida (1927), which deals with the time within which claims may be filed against the estate of a decedent, provides:

> No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post-office address of the claimant and shall be sworn to by the claimant, his agent or attorney and be filed in the office of the county judge granting letters. Any such claim or demand not so

filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise: Provided, however, that the lien of any duly recorded mortgage and the lien of any person in possession of personal property and the right to foreclose and enforce such mortgage or lien shall not be impaired or affected by failure to file claim or demand as hereinabove provided, but such failure shall bar the right to enforce any personal liability against the estate, and the claimant shall be limited to the enforcement of the mortgage or lien against the specific property so mortgaged or held. Nothing herein contained shall be construed to require any legatee, devisee or heir at law to file any claim for the share or interest in the estate to which he may be entitled.

STATEMENT

On March 19, 1935, one J. F. Andrew executed to one W. B. Craig, a promissory note for $839.86, payable in thirty-six equal monthly installments (R. 8). The note was in due course assigned and transferred to Johns-Manville Credit Corporation (R. 5). The note, given to finance the improvement of certain property of Andrew (R. 4, 9), was insured by the United States under the National Housing Act, c. 847, 48 Stat. 1246 (R. 4–5). In April 1936, Andrew defaulted in the payment of

the note (R. 6) and on July 30, 1936, the Johns-Manville Credit Corporation made claim upon the Federal Housing Administrator for $525.19, the balance due on the note (R. 6). The claim was paid on August 21, 1936, by the Administrator through a draft drawn on the Treasurer of the United States (R. 6). The Johns-Manville Corporation thereupon assigned the note to the Federal Housing Administrator acting on behalf of the United States.

The maker of the note, Andrew, died and on August 11, 1937, the respondent Arlene Summerlin was appointed Ancillary Administratrix of his estate by the County Judge of Polk County, Florida, and she qualified as such administratrix on the same date (R. 1). Thereafter, on August 13, 1937, the respondent gave notice by publication to the creditors of the estate of J. F. Andrew, deceased, to file proof of their claims against the estate within eight months as required by law (R. 1, 2).

On July 1, 1938, the United States filed in the office of the County Judge of Polk County, Florida, proof of its claim against the estate of J. F. Andrew, deceased, in the amount of $525.19 with interest, together with a petition for an order allowing the claim and declaring it to be entitled to priority under R. S., Secs. 3466 and 3467 (R. 3). The County Judge, on August 19, 1938, denied the petition and disallowed the claim of the United States because it was not filed within eight months

after notice by publication was given to the creditors (R. 11).

The United States appealed from this order to the Circuit Court for Polk County, Florida, which affirmed (R. 15). On further appeal the Supreme Court of Florida affirmed the order of the Circuit Court (R. 23).

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Florida erred:

1. In holding that the state statute limiting the time within which claims must be filed against a decedent's estate validly applied to the United States.

2. In holding that the claim of the United States was void for failure to comply with state statute.

3. In affirming the judgment of the Circuit Court.

REASONS FOR GRANTING THE WRIT

1. The court below held that a claim of the United States against the estate of a decedent was void because it was not filed within the eight months' period prescribed by a Florida statute for the filing of claims against a decedent's estate. This holding is inconsistent with the applicable decisions of this Court.

It is well settled that state statutes of limitation fixing the time within which suit must be brought are not applicable to the United States in the absence of express assent by Congress. *United States* v. *Kirkpatrick*, 9 Wheat. 720, 735; *United*

States v. *Knight*, 14 Pet. 301, 315; *United States* v. *Thompson*, 98 U. S. 486, 489; *Fink* v. *O'Neill*, 106 U. S. 272, 281; *United States* v. *Nashville, &c. R'y Co.*, 118 U. S. 120, 125; *Dupont de Nemours & Co.* v. *Davis*, 264 U. S. 456, 462; *Board of County Commissioners, Jackson County, Kansas* v. *United States*, No. 14, this Term, decided December 18, 1939. And since the inapplicability of state statutes of limitations is founded in the Constitution, submission to such statutes cannot be required as a condition of access to the state courts. *Davis* v. *Corona Coal Co.*, 265 U. S. 219, 222–223; cf. *Gibson* v. *Chouteau*, 13 Wall. 92.

The court below recognized that a general state statute of limitations could not be applied to the United States (R. 22–23), but concluded that "a statute of non claim for the orderly and expeditious settlement of the estates of decedents" was governed by a different principle. But the constitutional immunity of the United States is not defeated by a state policy to make "expeditious settlement of estates" any more than by the state policy, embodied in general statutes of limitation, to "protect the citizens from stale and vexatious claims." *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 136.

The court below also relied on *Cooke* v. *United States*, 91 U. S. 389, and *United States* v. *Barker*, 12 Wheat. 559, which formulate the rule that "when the United States become parties to com-

mercial paper, they incur all the responsibilities of private persons under the same circumstances." (91 U. S. at 396.) This principle obviously has no application here. So far as expeditious liquidation of estates is concerned, which is the end to which the nonclaims statute is directed, it is immaterial whether the claims are based on commercial paper or derive from some other source, and the statute makes no distinction between types of claims.

2. There is a conflict of decisions on the point here involved in the state courts and lower federal courts. Mr. Justice Story, on circuit, held, in *United States* v. *Hoar*, Fed. Cas. No. 15373, that a nonclaims statute did not preclude a suit against an administrator even after his discharge, and that a statute of limitation could not be applied to a claim of the United States against a decedent's estate. This view was adopted in *United States* v. *Backus*, Fed. Cas. No. 14491, *Pond* v. *Dougherty*, 6 Cal. App. 686, and *Harrison* v. *Deutch*, 294 Ill. App. 8. In *United States* v. *Hailey*, 2 Idaho 22, on the other hand, the Supreme Court of Idaho adopted the view taken by the court below.

3. The question is one of considerable public importance. The Government, it need hardly be observed, has frequent occasion to file claims against estates of decedents in the probate courts of all the states, forty-six of which have statutes regulating the time and manner in which such claims against estates of decedents may be filed.

Note, 36 Mich. L. Rev. 973. The statutory period varies from state to state, but is normally relatively short as instanced by the eight-month period provided in the Florida statute here involved. The delays inherent in transmittal of information from the various agencies and departments of the Government to the Department of Justice, and from it to the United States attorneys, render it extremely difficult for the United States to file claims within periods which may fairly be prescribed for private individuals. Whether it must undertake that burden should be determined by this Court.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

FEBRUARY 1940.

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